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June 26, 1992

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Federal Communications Commission  
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92-80

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JUN 29 1992

Federal Communications Commission  
Office of the Secretary

Dear Sir:

Enclosed please find original and nine copies of the Comments of WJB-TV Ft. Pierce Limited Partnership and WJB-TV Melbourne Limited Partnership which are submitted to you in response to Notice of Proposed Rule Making 7909 in Docket No. 92-80.

Please file-stamp the enclosed copy of this letter and return it to us in the self-addressed stamped envelope.

If you have any questions, please give me a call.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

  
Alvis J. Bynum, Jr.

AJB/jpd  
Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION

FCC 92-173  
FCC MAIL SECTION 28378

Washington, D.C. 20554

JUN 29 10 17 AM '92

In the Matter of )  
 )  
Amendment of Parts 1, 2, and )  
21 of the Commission's Rules )  
Governing Use of the Frequencies )  
in the 2.1 and 2.5 GHz Bands )

RECEIVED BY  
PR Docket No. 92-80  
RM 7909

JUN 29 1992

COMMENTS OF WJB-TV MELBOURNE LIMITED PARTNERSHIP  
AND WJB-TV FT. PIERCE LIMITED PARTNERSHIP

Federal Communications Commission  
Office of the Secretary

Pursuant to the Rules and Regulations of the Federal Communications Commission (the "Commission") and the directives of the Commission as set forth in its Notice of Proposed Rule Making No. 7909 in Docket 92-80, adopted on April 9, 1992 and released on May 8, 1992, WJB-TV Ft. Pierce Limited Partnership and WJB-TV Melbourne Limited Partnership (collectively referred to herein as "WJB") respectfully submit the following comments.

BACKGROUND

WJB-TV Ft. Pierce Limited Partnership is presently operating a wireless cable television system in Ft. Pierce, Florida. The system began operations in May of this year and has been adding customers steadily since that date. It presently offers 22 channels of programming and expects to add an additional eight in the coming months.

WJB-TV Melbourne Limited Partnership is assembling a wireless cable television system to serve Melbourne, Florida. It

has already entered into agreements to utilize all of the E and F channel groups with the Tentative Selectees of these channels and has entered into lease agreements to utilize excess capacity on twelve of the ITFS channels. The system is expected to begin operations during the first quarter of 1993, assuming that licenses for the E and F channels have been granted to the Tentative Selectees by that time.

Although WJB is a relatively new participant in the wireless cable television business, it is hardly new to the video entertainment industry. The company's sister entity is WJB Video Limited Partnership, the largest franchisee of Blockbuster Entertainment Corporation and the operator of over two hundred Blockbuster Video stores in ten states and the District of Columbia.

Unlike many wireless operators, WJB has the necessary financial and managerial resources to succeed in this industry. The company's principal investors include members of the Board of Directors of several prominent corporations, including Citizens and Southern Corporation, SCANA Corporation, Sunoco Products Company, Blue Cross/Blue Shield of South Carolina, NCNB National Bank of South Carolina and Duke Power Company; members of the Boards of Trustees of several colleges; and the former President of the South Carolina Chamber of Commerce and the South Carolina Development Board. In addition, its senior management includes the former

Chief of Staff to the Governor of South Carolina and to the United States Secretary of Energy.

In short, WJB has the financial, managerial, and technical resources to succeed in the wireless cable industry. For this reason, it is the type of investor and operator whose involvement in this industry is essential to the viability and success of wireless cable television.

#### COMMENTS OF WJB

##### **I. Processing of MMDS Applications**

WJB strongly advocates efforts to coordinate the filing and processing of MDS and ITFS applications. Before the development of wireless cable television, when ITFS and MDS were largely independent services, individual users could adequately be served by whichever Branch of the Commission had authorization over their application. However, as the industry has developed, an acute need for coordination between the processing of different types of applications has arisen. At present, virtually all wireless operators, because they utilize channels from both types of services, must contend with different filing requirements, application forms, fees, engineering standards, processing procedures, and public notice provisions. WJB believes that the industry would best be served by conforming and unifying these requirements and procedures, at least to the extent possible.

WJB proposes that the Commission adopt the "one-stop shopping" approach which has been promoted by the Wireless Cable Association. Ideally, one person or group of persons should oversee the processing of all of the pending ITFS and MDS applications filed in a given market. This would prevent the need for duplicative review, especially multiple engineering analyses, which have proved to be so burdensome and time-consuming to the Commission staff in the past. Ideally, all of the applications for a given market, assuming that they are contemporaneously filed, should appear on the same Public Notice and be processed simultaneously, in a manner such that both the operator and the applicants know who is processing their applications and at what stage the review is proceeding. Furthermore, to the extent possible, all of the construction deadlines and expiration dates associated with each of the licenses should be consistent, so as to simplify monitoring of and compliance with the licenses.

Of course, WJB realizes that inherent differences exist between the ITFS and MDS services, and that, as a result, some differences in the forms, fees, standards, and procedures should and must continue to exist. Nevertheless, WJB embraces the concept of simplifying and unifying the process, to the extent possible.

## **II. Interference Protection Criteria**

WJB recognizes the merits of the Commission's proposal to modify its current interference standards. The problems caused by the current standards are well-known; they include the expenses of

conducting complex engineering analyses, the difficulty of determining when and to what extent interference exists in a particular case, and the processing delays that arise because of the need for Commission engineers to analyze each proposal.

WJB believes that the current standards also allow the filing of sham applications by persons who have no intention of building their proposed stations. For example, an unscrupulous applicant could submit an application for a location on the outskirts of a metropolitan area under development by a legitimate operator. Through the use of creative engineering techniques, it is conceivable that the application could be prepared in such a way that it complies, or appears to comply, with the Commission's current rules. If granted, however, such a station could make development of all or part of the metropolitan area by the legitimate operator impossible or unfeasible, unless a "settlement" is reached with the applicant. Even if the application is eventually dismissed, the time and expense associated with opposing it could delay or even prevent the introduction of wireless services into the area.<sup>1</sup> In some cases, considering the time that

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<sup>1</sup> WJB strongly suspects that such a situation has occurred in its proposed service areas. WJB has acquired the rights to both the E and F channels in both Ft. Pierce and Melbourne, two communities which are located approximately 80 miles apart on Florida's Atlantic coast. The proximity of the two areas should allow WJB to provide competitive wireless service to both communities, utilizing economics of scale and other shared resources. However, late last year, applications were filed for the E and F channel groups for a small community located between Ft. Pierce and Melbourne. By specifying an antenna height of only ninety feet, over six hundred feet less than that specified in contemporaneously filed ITFS applications, the applicant was able

it takes to have such disputes resolved, it may actually be more economical to negotiate a settlement with the offending applicant than to oppose the application.

Despite these shortcomings, WJB is concerned that the adoption of absolute standards based on uniform separation intervals would hinder the introduction of service into certain markets. While a specific standard might be useful in some markets, including those served by WJB, it might be inappropriate in others. Significant geographic, demographic, and terrain differences exist between markets and regions of the country, and the adoption of a single standard might impede the introduction of service to some areas. Therefore, WJB believes that the current rules, to the extent that they allow for flexibility and thus the development of otherwise unserved markets by legitimate operators, should be preserved.

Of course, to achieve their objectives, the current rules require the cooperation and good-faith actions of all applicants and licensees. Sadly, it has become a fact of life in this industry that some persons are not motivated by such

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to contend that its signals would fall three-tenths of a mile outside of WJB's protected service area in Ft. Pierce (no interference analysis was conducted with respect to Melbourne). Because this applicant has filed and sponsored the filing of several hundred MMDS and ITFS applications, there is significant doubt that it will build or even intends to build this station. Unfortunately, the effect of this application is that it may prevent or significantly delay the introduction of wireless cable television to certain parts of Melbourne and Ft. Pierce.

considerations. In cases where this occurs, however, WJB attributes the problem to a defect in the character of the applicants, as opposed to a defect in the Rules.

WJB continues to believe that the solution to this problem is for the Commission to take action to punish, or at least discourage, persons who deliberately file such applications, especially those that are in direct circumvention of the Commission's Rules. Furthermore, because a large number of these dubious applications appear to be filed by the same persons, the Commission should automatically disqualify all applications of any person who is found to have submitted an application for any improper purpose.

### **III. Curtailing the Volume of Applications**

WJB generally favors any suggestion that is designed to curtail the volume of applications filed with the Commission. These applications place a burden on the Commission staff, thus delaying the processing of necessary applications and amendments required by legitimate operators. As a result, they have increased the costs of providing wireless cable services, and since such costs must inevitably be passed on to subscribers, have made wireless less competitive with traditional cable.

WJB is not complaining about legitimate applications filed by persons who desire to use the licenses for their intended purposes. While the volume of such applications has presumably



increased as the industry has developed and as educators have realized the potential of the ITFS spectrum, WJB is not advocating any mechanisms that would discourage the use of channels for valid commercial and instructional purposes. To the contrary, WJB objects to the scores of sham and speculative applications now being filed, which have served to delay and hinder the processing of legitimate applications and the introduction of service to many areas of the country.

It is important to recognize that at least two distinct groups have contributed to the problem. The first group consists of applicants who file dozens, or in some cases, even hundred and thousands, of applications with no intention or ability to construct the underlying stations. Some of these persons have collected conditional licenses, construction permits, or other rights to channels, solely for the purpose of reselling them at a profit. Potential operators, especially those that are relatively new to the industry or to a given market, must negotiate with these persons to acquire the necessary channels within a given market.

The amounts paid to those individuals serve only to drive up the costs of providing service. Unfortunately, these increased expenditures do not go towards improving the quality or quantity of services provided, but simply become a windfall for these who have cornered the market. To reduce the problems caused by this situation, WJB recommends the following:

1. scrutinize applications to extend construction deadlines. Delays in construction are often inevitable, and WJB believes that extensions should be given where it appears that good-faith progress in developing and constructing the station is being made. On the other hand, it appears that some persons have applied for multiple extensions so as to provide a longer period of time in which to market the underlying license. Extensions should be denied in these cases so that the licenses can be awarded to persons who sincerely desire to construct and operate the stations.

2. scrutinize applications to assign licenses prior to the completion of construction. Again, the Commission should take steps to prevent speculators from acquiring multiple licenses solely for the purpose of marketing them. Of course, the Commission should be careful not to cause hardship to the proposed assignee, who is generally a legitimate operator with plans to build and operate the underlying station.

3. Adopt the proposed rules prohibiting applicants from holding any type of interest in more than one application for the same channel or channels at sites within the same service area. The Notice of Proposed Rule Making specifically proposes to disallow the same person from serving as an officer, director, shareholder, trustee, beneficiary, owner, or partner of more than one such applicant. WJB favors this recommendation and proposes that the Commission add the duties

of "broker" and "agent" to the list. In the past, some persons, themselves often applicants, have "represented" dozens of other applicants, often friends or relatives, in locating buyers for their channels, collecting a sizable fee for their services. Such practices not only circumvent the rule contemplated by the Commission, but they contribute to the overwhelming volume of applications that are filed annually.

This problem is not limited to the MMDS spectrum. One entity, purportedly a wireless cable entrepreneur, has expressed its intention to sponsor ITFS applications in over 100 markets nationwide. Assuming that this entity were to sponsor applications for all five ITFS channel groups in each of these markets, as is typically done in this industry, it would be committing itself to construct a total of five hundred stations. Obviously, it is doubtful that any entity has the financial or other resources to embark on an undertaking of this magnitude. Unfortunately, such activities increase the backlog of applications pending before the Commission and may prevent the grant of licensee to entities that are more likely to utilize them.<sup>2</sup>

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<sup>2</sup> The Commission, in its efforts to reduce the volume of filings, should thoroughly investigate the real motivations of persons who make such filings. In this regard, WJB is mindful of the large number of Petitions to Deny that have been filed against this particular entity, many of which allege improper, dishonest, and even illegal conduct.

The second group contributing to this problem is the application mills. According to a recent edition of Investor Alert, a publication of the North American Securities Administration, Inc., these groups filed between 50%-90% of the MDS applications submitted in the Commission's most recent lottery, and for their efforts, collected between forty and sixty million dollars. Undoubtably, most of the investors in these schemes are unsophisticated, or at least unfamiliar with Commission rules, and thus do not understand the highly-speculative nature of their "investment". When these schemes are uncovered and become publicized, they cast considerable doubt on the reputation and integrity of the wireless cable industry as a whole.

Twice in the past year, representatives of WJB have been approached by these persons. In addition, WJB's attorney who was attending a "business opportunity show" in Columbia, South Carolina on December 15, 1991 on behalf of another client, was handed materials by one mill that had rented a booth at the show to market its services. In all of these cases, material misrepresentative were made and exorbitant profits were promised. One of the mills went so far as to insinuate that the Commission and the industry were endorsing its services.

WJB recognizes that the Commission staff has neither the time nor the resources to adequately monitor and regulate the activities of these persons. For this reason, WJB proposes that all in the industry, as well as the Commission, work to bring this

problem to the attention of all Federal and state enforcement authorities who have jurisdiction over this conduct.<sup>3</sup> For example, solicitations such as the ones outlined herein appear to constitute a violation of the South Carolina Business Opportunity Sales Act, as well as the similar laws of approximately twenty-two other states. Furthermore, these activities also appear to violate the rules of the Federal Trade Commission, as well as Federal and state Securities laws.<sup>4</sup>

Finally, the Commission should tighten its rules to prohibit so-called "settlement groups". At present, the mills use the promise of forming such groups as a marketing tool, representing that because they will file a large volume of applications (66 in one case known to WJB) and since each applicant will have an interest in all of these applicants, a customer will be virtually assured of "winning" a piece of the lottery.

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<sup>3</sup> WJB is aware that the Commission has successfully worked with the Federal Trade Commission and various state agencies in the past to curb the activities of the application mills. See "Young Wireless-Cable Field Spawns Widespread Fraud", Wall Street Journal (June 24, 1992); "Regulators Target Wireless Cable Mills," Multichannel News (November 4, 1991). Such continued cooperation is essential to resolving this problem.

<sup>4</sup> Establishing the applicability of these laws is important for several reasons. Not only do most provide specific and significant criminal and civil penalties, but they require the offeror (i.e., the application mill) to provide a detailed disclosure document to the prospective purchaser and to file that document for review by state and federal officials. If such a document is required, and if it is complete and accurate, it should alert potential customers to the risks involved in filing speculative applications, and thus significantly reduce the volume of such applications filed.

Presumably, such representations are made to increase the volume of applications that the mill will be asked to file. Unfortunately, they also increase the number of applications that the Commission must process.

### **III. Completion of Data Base**

WJB applauds the efforts of the Commission to construct a complete and accurate data base of licenses and applications. This step should allow the staff to quickly eliminate unacceptable filings as soon as they are received and should put operators on notice as to which channels are available in each market. As a result, fewer applications should be filed and more of these should be granted in a shorter period of time.

At present, the only data bases available to applicants and operators are those prepared by the Commission and by a commercial enterprise, using Commission releases. Both data bases contain numerous errors and omissions, so that applicants sometimes unknowingly submit applications which cannot be granted. Not only do these applications increase the administrative burden on the Commission, but they are expensive in terms of both time wasted and money expended to the applicants.

The Commission's data base should contain as much information as possible. For each market, it should include the name, mailing address, telephone number, and exact status of each applicant, as well as the call sign, frequency, location, polarity,


transmitter height, and power output of the station or proposed station and the grant date, construction certification date, and expiration date of the license. This information is critical to an operator in assessing the availability and feasibility of developing a particular market, and, unfortunately, it is not presently available without a sometimes-exhaustive review of the Commission's files.

In order to maximize its utility, the proposed data base should also include the same information with respect to ITFS applications and licenses. The existence, or lack thereof, of ITFS channels in a given market has a profound effect on an operator's ability to economically develop a given market.

Respectfully submitted this 26 day of June, 1992.

WJB-TV FT. PIERCE LIMITED PARTNERSHIP  
WJB-TV MELBOURNE LIMITED PARTNERSHIP

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